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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,123	03/15/2001	Victor Marcus Lewis	14219	2983

10

7590 06/11/2003

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EXAMINER
PRATT, HELEN F

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/744,123	LEWIS ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) 1, and 9 contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No basis is seen in the specification for the phrase "where the moisture content of the partially dehydrated vegetable piece is not 12% or less" particularly in the process.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 9 are indefinite in the use of the phrase "where the moisture content of the partially dehydrated vegetable piece is not 12% or less". This phrase is confusing because the first moisture content is 8 to 30%, and 8 % is less than 12%.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5, 7, 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. '167 in view of Rahman et al., '560 and Rahman et al. '026.

The claims are rejected for the reasons of record cited in the last office action and for these further reasons. Claims 1 and 9 have been amended to require that the moisture content of the partially dehydrated vegetable piece is not less than 12%. However, Lewis et al. '167 disclose that it is known to dehydrate a vegetable to a moisture content of 15-60% and compressing the dehydrated product (col. 2, lines 1-10). No patentable weight is given at this time in the requirement that after the compressing step that the moisture content is not less than 12%, because it is not seen that the compressing step affects the moisture content, and the claimed moisture content of 15-60% is shown in the previous step. In addition, Rahman '026 discloses dehydrating vegetables to within the claimed range of 5-8% (step e) which reads on Applicants' lower amount of 8%, rehydrating the vegetable to from 10-12% (f), compressing the vegetable, (step h), and then redrying to 5 and less per cent (i). Therefore, it would have been obvious to make a product with a moisture content of 12 % after compression, as the claimed moisture content has been shown in the previous step in Lewis and in step (f) in Rahman.

Claims 6, 8, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. as applied to claims 1-5, 7, 9-12 above, and further in view of Rahman et al. '560 and Rahman et al. '026.

ARGUMENTS

Applicants' arguments filed 4-21-03 have been fully considered but they are not persuasive. Applicants argue that the Examiner is confusing the meaning of the term optional in the claim language, but that the further step of dehydration is not really optional and since the preamble of the claim says that the vegetable has a moisture content of about 12% or less that the dehydrating step is not really optional. However, in a composition claim, the process is not given weight and vegetable pieces with a moisture content of less than 12% have been disclosed as above. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See In re Thorpe 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See Ex parte Jungfer 18 USPQ 2D 1796. The further explanation of the use of the term "optionally" is not found in the specification.

Applicants argue that Lewis et al. teach a product of having a moisture content of from 15-60%. However, it is used with the two Rahman et al. patents, which teach that it is known to dry a compressed product to 5% (abstract).

As to the process when requiring that the moisture content is not less than 12%, the reference to Lewis et al. show this limitation as above in the office action.

As to not being able to alter the teachings of Lewis et al. as to the moisture content, this is not seen as the references to Raman are disclosed which do show the claimed moisture contents, and with these teaching before the skilled artisan, it would have been obvious to vary the process as taught by the Raman et al. references.

The arguments as to the Rahman references for claims 6, 8, 13, and 14 have been addressed above and are obvious for those reasons.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Helen F. Pratt at telephone number 703-308-1978.

Hp 6-9-03

H. Pratt

HELEN PRATT
PRIMARY EXAMINER